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LOW POH KIM

v.

PENGARAH TANAH DAN GALIAN NEGERI SELANGOR & ORS

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HIGH COURT MALAYA, SHAH ALAM
PRASAD SANDOSHAM ABRAHAM J
[CIVIL SUIT NO: 22NCVC-826-06-2012]
16 JANUARY 2014

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LAND LAW: *Transfer - Fraud - Whether void and insufficient instruments used to dispossess original registered owner of land - Whether transfers defeasible - Whether inefficiency of land title registering authorities facilitated commission of fraud - Whether proper procedures for issue of computerised land title to replace old document of title not followed - National Land Code, s. 5(A) and 14th Schedule*

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The instant case was yet another instance of a land owner ('the plaintiff') finding himself cheated of his land by fraudsters whose fraud was facilitated by the inefficiency of the first and second defendants whose duties were to administer and maintain an efficient, transparent and credible system of safeguarding the interests of registered proprietors of land. The plaintiff, who had been the registered and beneficial owner of his land for 45 years, found that his land had been transferred to the third, fourth and fifth defendants by way of a memorandum of transfer that had been signed by the second defendant ('D2') purportedly as the plaintiff's attorney under a power of attorney ('PA') which was registered with the land office. During the trial of the plaintiff's suit to set aside the impugned transfers and to recover his land, the evidence showed that (i) the plaintiff had not given any PA to D2; (ii) the donor's name in the PA was 'Low Kim Poh'; (iii) the law firm that prepared the document did not exist; (iv) the donee's name was incorrectly stated; (v) the plaintiff's address was given as Suite 1.33, 21st Floor KLCC (not the plaintiff's address); and (vi) the supposed solicitor who attested the plaintiff's 'signature in the PA was not a genuine advocate and solicitor. The original issue document of title ('IDT') to the land was still in the plaintiff's possession. Witnesses to the transaction involving the land testified that the person who agreed to sell the land to the third, fourth and fifth defendants and who appointed D2 as

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his attorney did not look like the plaintiff at all and he had a different identity card. The evidence showed that the authorities had issued a new computerised title to replace the IDT without following the procedures set out under the National Land Code ('NLC'). The second, third and fourth defendants not only filed a counterclaim against the plaintiff and also one against the first and sixth defendants for the negligence of allowing the wrong IC number to be inserted in the issue document of title and allowing a third party to collect the new title without complying strictly with the 14th Schedule of the NLC.

Held (allowing plaintiff's claim and dismissing counterclaims):

(1) The computerised title issued for the land was an insufficient and void document and therefore any transaction based on the same was defeasible. (para 12)

(2) The first and sixth defendants did not have a system in place to ensure compliance with procedures under the NLC governing the replacement of an old title with a new computerised title. Section 5(A) and the 14th Schedule, in particular s. 8(9) of the Schedule, clearly set out the procedures that had to be followed. There was no evidence to show the plaintiff took delivery of the computerised title and the fact the original IDT was still in his possession showed that s. 8(9)(d) of the 14th Schedule, in particular, was not complied with. (paras 6, 7 & 11)

(3) The PA was void and an insufficient instrument; accordingly the transfer of the land to the third, fourth and fifth defendants was defeasible under s. 340(2)(b) of the NLC. The PA was riddled with inconsistencies and glaring matters that would have put any reasonable person on notice to exercise caution. Forensic evidence tendered by the plaintiff and accepted by the court showed the donor's signature in the PA was not the plaintiff's and the identity card number stated therein was not his. The discrepancies in the PA should have caused the first and sixth defendants to investigate further rather than to take the document at its face value. They had a duty to administer and maintain an efficient, transparent and credible system to safeguard the interests of registered proprietors of land like the plaintiff but their conduct was wanting. (paras 16, 19, 21 & 23)

(4) The third, fourth and fifth defendants had not pleaded a proper and valid counterclaim against the first and sixth defendants under the Rules of Court 2012. The counterclaim was incompetent and had to be dismissed. (para 26)

Case(s) referred to:

Lim Chin Sim & Anor v. AGS Harta Sdn Bhd & Anor [2011] 1 LNS 32 HC ***(refd)***

Shayo (M) Sdn Bhd v. Nurlieda Sidek & Ors [2013] 1 CLJ 153 HC ***(refd)***

Tan Ying Hong v. Tan Sian San & Ors [2010] 2 CLJ 269 FC ***(refd)***

Uptown Properties Sdn Bhd v. Pentadbir Tanah Wilayah Persekutuan & Ors [2012] 3 CLJ 271 HC ***(refd)***

Legislation referred to:

Federal Constitution, art. 13

National Land Code, ss. 5A, 8(9), (a), (c), (d), 9(d), 12(1)(b), (3)(d), 16(1), 157(a), 340(2)(b), (3)

Rules of Court 2012, O. 15 r. 3(2)

For the plaintiff - Goh Meng Yen (Nabir Azwa with him); M/s Iza Ng Yeoh & Kit

For the 1st & 6th defendant - Kam Sani; State Legal Advisor

For the 3rd, 4th & 5th defendants - Rehvathi Krishnasamy (Lalitha Suppiah with her); M/s Teh Soon Kee & Partners

Reported by Ashok Kumar

JUDGMENT

Prasad Sandosham Abraham J:

[1] This is another unfortunate case of an attempt to deprive a person of their property perpetuated through fraud, forgery and the use of an insufficient or void instrument. Apart from the main actors being the fraudsters, but through the ineffective administrative conduct by the first and sixth defendants the fraudsters were able to render a performance worthwhile of appreciation by "the Academy of Fraudsters" if there was ever one, and the result, the said land was transferred to the third to the fifth defendants. Let me first set out the undisputed facts of this case.

(a) For more than 45 years, the plaintiff had been the original registered and beneficial owner of a piece of land known as Geran Mukim No. 4745, Lot No. 3325 & 3326 Mukim of Hulu Yam, State of Selangor since the issuance of the original title certificate on 24 February 1965 (the said land).

(b) The first defendant is the party authorised and given the responsibility under s. 16(1) of the National Land Code to be sued on behalf of the Selangor State Authority for any action, suit or other proceeding relating to land.

(c) The first defendant is obliged under the law and under the National Land Code to keep the master titles register for all lands within their jurisdiction and only to register the transfer of the land if it is in accordance with the law.

(d) The sixth defendant is the party appointed by the State Authority under s. 12(1)(b) of the National Land Code under the instruction of the first defendant according to s. 12(3)(d) of the National Land Code among others to manage *inter alia* the master titles registration for the lands under their jurisdiction.

(e) It is admitted by the second, third, fourth, defendants that the plaintiff did not know any of the second, third, fourth, defendants and that they do not know him either.

(f) On 16 March 2011, the property was transferred to the third, fourth and fifth defendants by way of a Form 14A that was signed by the second defendant supposedly as the plaintiff's attorney by way of a power of attorney dated 14 December 2010 and which was registered by the sixth defendant with the Kuala Kubu Land Office on 15 December 2010.

(g) The transfer of the land to the third, fourth and fifth defendants was first discovered by Low Hoe Hoy, the plaintiff's daughter, in June 2011 when she saw a signboard that was put up by them on the said land advertising the land for rental. When the plaintiff's son, Low Kim Mun, called the number on the sign board, a man answered to tell him that the land was for rental at RM1,800 a month and that he had bought the land from an agent. The plaintiff's son then conducted a land search at the Pejabat Tanah Kuala Kubu Baru and found out that the ownership of the land has been transferred to the third, fourth and fifth defendants. Low Kim Mun then went ahead to lodge a police report on 21 June 2011 on the sale and transfer of the property to the third to the fifth defendants without the knowledge and agreement of the plaintiff as its registered owner.

(h) It is agreed by all the defendants that the plaintiff was not the party who had agreed to sell the land to the third, fourth and fifth defendants and to appoint the second defendant as his agent because DW4 and DW5 who were witnesses both agreed under cross-examination that the person whom they saw and who supposedly signed the power of attorney as "Low Poh Kim" did not look like the plaintiff at all and had an entirely different identity card.

(i) The plaintiff had worked and toiled the said land for over forty years until recently where age and health had overtaken him but still had in his possession the original issue document of title (IDT) which was produced in court.

[2] There were several issues raised between the plaintiff and the first and sixth defendants and I propose to deal with issues two, three and four which I now set out:

– That the use of the power of attorney dated 11 December 2010 and Form 14A dated 16 February 2011 by the second, third, fourth and fifth defendant to transfer the property from the plaintiff to the third, fourth and fifth defendant is invalid and contrary to the law;

– That the transaction is defeasible and invalid and should be cancelled under ss. 340(2) and (3) of the National Land Code as it was obtained by way of forgery or by an insufficient or void instrument; and

– That the third, fourth and fifth defendants have unlawfully acquired their title in the property in the purported exercise of power or authority conferred by written law.

[3] Which in my view is the crux of the case for the plaintiff. The transaction was effected by a person holding out to be the plaintiff claiming to have applied for a new computerised title pursuant to a power of attorney purportedly granted by the plaintiff to the second defendant. Let us first look at the plaintiff's original title ie, Bundle B p. 1 read together with Bundle B, p. 2 which clearly shows the plaintiff is described on the issue document of title as Low Poh Kim with his address at 123, Kg Pisang Ulu Yam Lama, 44300 Batang Kali Ulu Selangor (see also Bundle B p. 7). The plaintiff eventually produced the original title in court. A copy the IC of the plaintiff new and old is found at (p. 58 of Bundle B).

[4] The next document to be examined is the irrevocable power of attorney dated 14 December 2010 purportedly granted by the plaintiff to the second defendant (pp. 12-15 of Bundle B). Firstly, the donor of the purported power is described as Low Kim Poh and not the plaintiff and the IC will clearly bear this out. We now know the law firm that prepared this document did not exist as a firm. For that matter, the donee's name is not correctly set out. Over the p. 13 of Bundle B the plaintiff's address is described as suite 1.33, 21st floor KLCC which is certainly not the address of the plaintiff. The solicitor who attested the purported signature of the plaintiff is not on the roll of advocates & solicitors.

[5] The second defendant then purported to use the power of attorney to effect a transfer of the said land to the third and fourth and fifth defendants (see pp. 16-20 of Bundle B). It is to be noted that both DW4, the broker for the transaction between the second and the third, fourth and fifth defendants and DW5 the solicitor both confirmed that the person holding himself out to be the donor of the said power of attorney was not the plaintiff as shown in the photographs. So the charade of the plaintiff purportedly granting an irrevocable power to the second defendant was now complete. The question then is whether the transfer to the third, fourth and fifth defendants is by virtue of an insufficient and/or void instrument valid.

[6] With regards to the issue document of title, the plaintiff produced to court the original issue document of title and its veracity was not challenged. If that being the case, how could a transfer have been registered on the basis of a computerised title ('IDK') being issued. The relevant provisions of the National Land Code, ie, s. 5A and the 14th Schedule in the National Land Code clearly set out the procedure that must be followed, before a computerised title could be issued to replace the old title in particular s. 8 of the 14th Schedule and in particular sub-s. 9, which I now set out:

> (9) Upon the conversion of an existing document of title to a computer printed document of title under the preceding subparagraphs, the Registrar shall-
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> (a) make two copies of the plan from the existing register document of title, where in the case of final title, from the copy as approved by the Director of Survey and Mapping under paragraph 396(1)(e), in Form B1 or B2, as the case may be, and shall be duly authenticated under his hand and seal;

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(b) endorse across the face of the existing register document of title to the effect that the title in question has been converted to the computer printed register document of title, and on the making of such endorsement the existing register document of title shall be deemed to have been cancelled;

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(c) call upon the proprietor to take delivery of the computer printed issue document of title and the plan of the land; provided that where the conversion is effected by the Registrar on his own accord under subparagraph (5), he shall not be obliged to deliver to the proprietor the computer printed issue document of title unless the existing issue document of title is produced to him; and

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(d) cancel and destroy the existing document of title when submitted to him.

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[7] It is clear, that there was no evidence led to show the plaintiff had taken delivery of the computerised title and the fact the original title was in the possession of the plaintiff and the same was produced in court, clearly shows that sub-s. 9(d) in particular had not been complied with. I refer to notes of evidence paras. 7-22 on p. 63 [Jilid 1] dated 30 April 2013 and I quote:

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Court

Q: So ok. Tuan Saiful macam mana? What is the position? Yang tadi saya tanya soalan tu boleh jawab?

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A: Yang Arif, di Pejabat Tanah ni kita tak ada simply melayanlah. Melayan mana-mana individu yang datang nak surrender title without any urus niaga ataupun bukan urus niaga. So datang simply saya nak tukar title baru because ada title baru. So kita tak akan melayan macam tu lah. Might as well kalau kita tengok title dia ok, dia punya dokumen masih elok lagi kita kata you buatlah any transaction sama ada you nak ambil alamatkah, dan sekarang dah mudahlah. You ambil alamat kita akan proses tukar alamat dan sebagainya then kita akan issue new title. So title lama tu kita akan ambil kita akan shred. Tapi kalau simply datang nak tukar memang tak ada

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Counsel For Plaintiff

Q: Ini bukan soalan Yang Arif, Yang Arif tanya ada buku perserahan

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A: Buku perserahan

Q: Yang orang menyerahkan surat hakmilik lama

Court

Q: Kalau bila-bila masa yang rekodkan bahawa ...

A: Tak ada, memang tak ada buku.

Q: Tak ada?

A: Because tiada any transaction. Buku yang kita rujukkan ni hanya buku-buku yang melibatkan transaksi urus niagalah

Counsel For Plaintiff

Q: Tapi macam mana jika ada transaksi pemindahan milik, jadi kamu akan memerlukan surat hakmilik asal untuk diserahkan betul tak?

A: Kalau

Q: Sistem manual ada apa-apa buku perserahan yang direkodkan, kita telah menerima surat hakmilik manual

A: Oh tidak, tu

Q: Tiada?

A: Tak

Q: Tidak

A: Dia tak ada split booklah, contohnya kita terima transaksi permohonan untuk pindah milik, di dalam borang permohonan pindah milik itu 14 A dan juga title, so title yang owner serahkan tu kita takkan salin dekat another buku lain bermaksud kita terima, tak ada

Q: Kita sudah terima pada tarikh, tidak ya?

Court

Tiada ya? Alright

Counsel for Plaintiff

Q: Jadi ia merupakan satu anggapan, assumption, system Land Office, system Pejabat Tanah bahawa sekiranya computer title telah dikeluarkan ini bermakna dan digunakan, ini bermakna bahawa surat hakmilik manua asal telah pun dikembalikan kepada Pejabat Tanah?

A: Ya.

[8] Paragraphs 4-35 at p. 44 of notes of proceedings for 30 April 2013:

Counsel for Plaintiff

Q: Sekiranya salinan register hilang atau musnah, ianya mesti di suatu notis mesti dihantar kepada pemilik berdaftar di bawah Kanun Tanah Negara dan Kanun Tanah Negara juga memerlukan Pentadbir Tanah untuk meletakkan nota dalam warta kerajaan negeri, betul tak?

A: Betul.

Q: Dan sekiranya suatu dokumen, issue document of title dihilangkan atau dimusnahkan dalam tangan pemilik berdaftar, maka pemilik berdaftar itu mestilah membuat laporan polis dan surat akaun dalam, sebelum dia boleh membuat permohonan kepada Pentadbir Tanah untuk mengissue atau mengeluarkan salinan baru, issue document of title, betul tak?

A: Betul, sehingga tahun, pertengahan tahun 2012 sahaja.

Q: Sehingga tahun 2012?

A: Pertengahan

Q: Maaf

A: Sehingga pertengahan tahun 2012.

Q: Sehingga? Apa berlaku selepas itu?

A: Selepas itu, ada arahan daripada arahan daripada dulu, Ketua Setiausaha Negara, menyatakan tidak perlu ada laporan polis dan sebagainyalah. Sekadar hanya akuan bersumpah, tetapi apa yang kita praktiskan di Pejabat Tanah, kita still nakkan laporan polis dan juga akuan bersumpah.

[9] I also refer to para. 17 p. 48 of notes of proceedings for 30 April 2013:

Counsel for Plaintiff

Q: Adakah Encik bersetuju bahawa issue document of title, jika ianya diperbaharui ya, mengikut rekod Register Document of Title, ianya akan mempunyai butiran yang identical dengan register document of title?

A: Yes mesti sama.

[10] And also p. 75 I quote:

Counsel for Plaintiff

Q: Setuju ya? Ok jadi Encik Saiful, boleh tak Encik Saiful lihat tukar ganti hakmilik yang mengatakan endorsan hakmilik ini telah ditukar ganti kepada hakmilik catitan computer pada borang 50KSEK11BK di bawah jadual ke 14 Kanun Tanah Negara pada ... adakah tuan boleh lihat cop itu yang merah itu?

A: Boleh

Q: Adakah tuan bersetuju bahawa walaupun ianya mempunyai cop Pentadbir Tanah disana, tak ada sebarang tarikh ditulis dan tak ada sebarang tandatangan di bahagian itu?

A: Setuju.

Q: Setuju?

A: Setuju

Q: Jadi menurut Register Document of Title, Encik sendiri ianya maaf ianya mempunyai satu pengendorsan tukar ganti hakmilik. Tetapi ianya tidak mempunyai tandatangan Pentadbir Tanah dan tidak mempunyai tarikh tukar ganti itu dilakukan. Betul tak?

A: Setuju.

Q: Jadi bukankah ini, bukankah Encik setuju bahawa ini merupakan satu perkara yang tidak teratur di bawah prosedur Kanun Tanah Negara? Kalau tidak diketahui bilakah tukar ganti tu dilakukan, tidak diketahui sama ada ia kah diluluskan oleh Pentadbir Tanah kerana tiada ada tandatangan.

A: Saya di waktu tu saya tak pasti dia punya sama ada dia masuk ke lump sum ataupun go one by one. Jadi kalau masukkan lump sum maybe ada, because ada certain tu yang bertanda.

Court

Ok itu saya faham may be you don't know. Tapi sekarang saya fikir kalau saya fikir balik, keterangan tadi, when I asked you, Tuan Saiful ada kata "you cannot just go and surrender the old title like that, mesti ada transaksi ok? So ikut ini kalau saya ikut keterangan Encik Saiful patutnya ada transaksi bukan? Kalau tidak, macam mana boleh tukar jadi computer title yang baru?"

[11] The evidence clearly shows, the first and the sixth defendants did not have a system in place to ensure compliance with the exchange of an old title for a new computerised title as provided for under the National Land Code.

[12] In my judgment, the IDK ie, the computerised titled issued was an insufficient and void document and therefore any transaction based on the same would be defeasible. I refer to my decision in *Uptown Properties Sdn Bhd v. Pentadbir Tanah Wilayah Persekutuan & Ors* reported in [2012] 3 CLJ at p. 271, where I held in (2) & (3) and I quote:

> (2) In order for the computerised title to be issued pursuant to s. 5A of the NLC, a notice must be sent by the plaintiff to surrender the old title in exchange for the new computerised one. On the facts, there was no evidence to suggest that such notice had been sent. This was in contravention of the 14th schedule to the NLC. (paras 8 & 10)
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> (3) The issuing of a computerised title to the 4th defendant as a registered proprietor when the original title to the said land continued to be in the possession of the plaintiff was *ultra vires* as it contravened the provisions of the s. 5A of the NLC and 14th Schedule and also s. 340(2)(c) of the NLC. It follows therefore that any instrument executed by the director of the 4th defendant would be void and insufficient *per se*. (para 17)

[13] I also refer to the case of *Shayo (M) Sdn Bhd v. Nurlieda Sidek & Ors* reported in [2013] 1 CLJ at p. 153 where it was held by Justice Harmindar Singh Dhaliwal.

> (1) The issuance of a computerised IDT in the name of D1, being a breach of the provisions of the 14th Schedule of the NLC, was *ultra vires* and unlawful and deprived the plaintiff of its land in violation of art. 13(1) of the Federal Constitution. (para 34)
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> (2) The IDT issued in D1's name was a nullity and void with the effect that any other instruments executed thereon were also void and liable to be set aside at the instance of the rightful registered proprietor. In view of the void title at its inception, subsequent *bona fide* purchasers for value could not avail [2013] 1 CLJ 155 *Shayo (M) Sdn Bhd v. Nurlieda Sidek & Ors* themselves of the protection afforded by the proviso to subsection (3) of s. 340 of the NLC. The title issued to D7 had to be cancelled and the plaintiff restored as the registered proprietor and true legal and beneficial owner of the land. (paras 35 & 38)

(3) The issuance of a seco006Ed title for the land to D1 - when the original manual IDT continued to be in the plaintiff's possession and was the valid title - was without doubt due to a grave failure by D8-D12 to adhere to the strict mandatory provisions set out in the 14th Schedule of the NLC. D8-D12 had failed to ensure reasonable or adequate security of their computer system. With the computer system under their control it could not lie in their mouths to say they were not responsible for any misuse of the computer system. (paras 33 & 47)

(4) The irresistible supposition was that fraud was going on within the offices of D8-D12. No inquiry was conducted to ascertain how D1 could have been issued with a computerised IDT. Despite a departmental report regarding the falsification of the title to the land having been prepared in 2009, no registrar's caveat was lodged on the land until March 2011. No further investigation was done and in fact D8-D12 thereafter allowed the land to be transferred twice more to D6 and D7. Even when the registrar's caveat was lodged D8-D12, despite being aware the plaintiff's interest in the land was at risk, did not think it fit to inform the plaintiff of D6's application to remove the caveat. D8-D12 were grossly negligent and in breach of their statutory duties. (paras 48, 51 & 53).

(5) Under ss. 12 and 13 of the NLC designated officers of the government were charged with the responsibility of administrating the NLC and all things connected with it. These were the officers who were the persons responsible for the torts complained of here and they were the very same officers the plaintiff had named as defendants in this action. Section 16(2) of the NLC was also consistent with that approach. (paras 56 & 57)

[14] The first and sixth defendants produced D1 to show compliance with the 14th Schedule of the National Land Code. However as I have observed earlier the other requirements of ss. 8(9), (a), (c) and (d) of the 14th Schedule of the NLC had not been complied with, D1 remains *ultra vires*.

[15] Based on the aforesaid and on this ground alone, the plaintiff's claim against the third, fourth and fifth defendants should be allowed. However, I have decided to proceed to examine the other documents I have alluded to earlier.

[16] The power of attorney purportedly executed by the plaintiff as the donor to the second defendant as donee (Bundle B, pp. 12-15) was the basis by which the transfer of the said land was effected to the third, fourth and fifth defendants by the second

defendant. As I have already pointed out earlier the said impugned document is riddled with inconsistencies and glaring matters that would have put any reasonable person on notice that caution would have to be exercised. Forensic evidence has been tendered by the plaintiff to show the signature of the donor who signed the impugned power of attorney is not that of the plaintiff. On the ground alone, the impugned power of attorney would be rendered void as the plaintiff did not empower the second defendant to act on his behalf (see Bundle B pp. 33-36). I also accept the evidence of PW3 the forensic expert on the point.

[17] To reiterate the following with regards to the impugned power of attorney, I find:

(i) Based on the evidence of PW3 and his forensic report, I accept as a fact, the plaintiff did not sign the said impugned power of attorney.

(ii) The identity card number of the plaintiff as stated in the impugned power of attorney is not that of the plaintiff (Bundle B p. 58 & p. 62). See also p. 108 of Bundle B)

[18] I refer to the unreported judgment of Dato' Noraini J in the case of Dalam Mahkamah Tinggi Malaya di Shah Alam Dalam Negeri Selangor Darul Ehsan (Guaman Sivil T-Track 4: 21-84-2005) *Lim Chin Sim & Anor v. AGS Harta Sdn Bhd & Anor* wherein Her Ladyship dealt with the importance of authenticating of identity cards and I quote:

> [30] There's the issue of the copies of the I/C of both Plaintiffs being questionable. According to SD1, both Plaintiffs had gone to sign the SPA and the transfer form in Tetuan Zamani's law firm. According to SD2, Tarmizan, he would have checked the I/C of both Plaintiffs to ensure that all documents are in order. However he admitted he did not sign as a witness before the Plaintiffs and that he admitted the copies of the I/C were not certified by him as certified true copy, which is a requirement of the Land Office. According to SD2 (3), if such a thing did occur, the transfer form would be rejected. Now SD2 himself admitted that he did not sign the copy of the I/C as certified true copy. It means that he had not compared that the Photostat copy of both Plaintiffs IC with the real I/C. How could that be. So who signed the transfer form that SD2 put his signature as a witness. I am of the opinion that this support the Plaintiffs case that they did not sign both the SPA and the transfer form.

[31] There's the question of the I/C themselves. Counsel for the Plaintiffs submitted that in respect of the identity cards of the vendors under the alleged SPA, during trial, the 1st Plaintiff upon looking at the identity cards at pages 57-58 of Bundle B(ii) marked as Exhibits P13(a) and 13(b), had clearly maintained that the identity cards as shown at pg 57-58 are not the Plaintiffs' identity cards.

(i) It is to be noted that both copies of the identity cards at pages 57-58 were clearly not a valid I/Cs as they lack the characteristics of the valid I/Cs.

(ii) If compared with the actual and valid ICs of the Plaintiff at pages 1 and 3 of Bundle B(ii), it can be clearly seen that both the ICs at pages 57-58 do not have the old IC number, the alleged picture of the 1st Plaintiff cannot be seen and the 2nd Plaintiff and the other elements on the Malaysian flag and the word "Malaysia" cannot be seen.

[35] If every office and staff at the Land Offices were diligent they would have noticed that the Photostat I/C of Lim Chin Sim were so black it's not possible to identify the person and that the I/C's were not certified true. The explanation given was that after checking, all documents appeared to be okay. If there's any document that's questionable, the application to transfer would be put on hold and that they would contact lawyers submitting the transfer documents. Witness for the second Defendant gave evidence that the application was not put on hold. In fact one witness for the Second Defendant testified that they had received the Photostat copies of the I/Cs which was certified true copy but that those copies were handed back to the lawyers. I am of the opinion that the second Defendant themselves had not given a good explanation why there was a transfer of name from the Plaintiffs to the First Defendant when clearly the lawyers for the First Defendant had submitted photocopies of the I/C which is black and obviously a forgery. How could it be that after 3 checks on documents submitted for transfer, they did not detect the defective I/Cs.

(iii) The purported address of the plaintiff being in KLCC apart for being incorrect is so incredulous that alarm bells should have rung loud and it was clear that something was awry with this document;

(iv) The evidence of the plaintiff, that he never had intended to dispose the said Land and had in fact dealt with the Land in his will, clearly negates any intention on the plaintiff's part, to empower the second defendant to transfer the said Land to the third, fourth & fifth defendants.

[19] I find therefore as the impugned power of attorney is void and insufficient; the transfer to the third, fourth and fifth defendants is defeasible pursuant to s. 340(2)(b) of the National Land Code. I refer to the decision of the Federal Court in *Tan Ying Hong v. Tan Sian San & Ors* reported in [2010] 2 CLJ 269 in particular holding (8) and (9) where it was held:

> (8) The Court of Appeal in the present case was unnecessarily concerned with the manner the appellant got his name registered on to the title. The appellant's registered proprietorship was not an issue as it was not challenged by any party including the third respondent. The question was whether the charges registered in favour of the third respondent were defeasible under sub-(2)(b) NLC. (paragraph 60)
>
> (9) the fact that the third respondent acquired the interest in good faith for value was not an issue. Once it was satisfied that the charges arose from void instruments, it automatically followed that they were liable to be set aside at the instance of the registered proprietor, namely, the appellant. (paragraph 61)

[20] The defence of the first and sixth defendants is essentially one of procedure that argument is premised on Tort and Government Proceedings Act but in this case, s. 12 of the National Land Code and its provisions have been complied with by the plaintiff. As far as the third, fourth and fifth defendants are concerned, I am of the view, in light of my findings their defence is unsustainable. I therefore found for the plaintiff and made the orders that I did tailor to the justice of the case ie, to restore the deprivation of the plaintiff's constitutional right to the said land pursuant to art. 13 of the Federal Constitution.

[21] Before I deal with the third, fourth and fifth defendants' claim against the first and sixth defendants I feel it prudent to again remind the first and sixth defendants' duty in administering and maintaining an efficient, transparent and a credible approach to safe guard the interests of the registered proprietors of land like

the plaintiff. It is not enough to take a "on the surface approach" when glaring anomalies are starkly before the first and sixth defendants. As a consequence the plaintiff was almost nearly deprived of his property save for the intervention of the court which would have amounted to a breach of the plaintiff's rights preserved under art. 13 of the Federal Constitution which is a fundamental liberty of the plaintiff. This right of the plaintiff is sacrosanct and if the first and sixth defendants have by their conduct caused the plaintiff to be deprived of the said land, apart from the provisions of the National Land Code and infringment of the same, it is also a breach of fundamental liberties preserved by the Federal Constitution which would allow the court to intervene. These fundamental liberties as preserved by the Federal Constitution are the very core of the nation and its citizens and any breach of the same will have ramifications on the plaintiff who is after all part of the citizenry of this nation. The court must be proactive in ensuring the fundamental liberties provisions of the constitution must not be rendered impotent.

[22] I make reference again to my decision in *Uptown Properties Sdn Bhd* and to the extract from my judgment in that case which I now set out.

> [23] I find the conduct of the officers involved shows a failure to carry out their functions correctly and can hardly be construed to have carried out their duties in good faith. I would echo that portion of the judgment of the Federal Court in *Pow Hing & Anor v. Registrar of Titles, Malacca* [1980] 1 LNS 120; [1981] 1 MLJ 155 at pg 160 the judgment of Abdool Cader J at p. 160 and I quote:
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> > In tune with the prelude with which we commenced at the outset, we would by way of postlude in restating the message this decision delivers enjoin every official concerned with or involved in exercising powers and duties under the Code and related legislation to regard this judgment as regrettably necessary but solemn caveat, giving warning, loud and clear, against any wanton disregard or sloppy application of express statutory provisions in the exercise of their functions, and one to be understood, marked and digested as such. We would add that they must strive to be *au fait* with the law they have to administer and should not hesitate in the course of their statutory duties to seek legal advice whenever necessary from the State Legal

A Adviser or his confreres and should never put the latter in the invidious and perhaps even an intolerable position they found themselves in these proceedings of having both in the court below and before us to make feeble attempts at *ex post facto* justification for the inexcusable defaults of others on a *post hoc ergo propter hoc* premise, quite apart from unnecessarily constraining the justly aggrieved to pit themselves in curial combat against the massive and bottomless purse of the State - much to the delight, perhaps, of the legal profession.

C [29] The plaintiff had effectively been deprived of his right to the said land a right provided for under art. 13 of the Federal Constitution, I set out art. 13:

13. Rights to property.

D (1) No person shall be deprived of property save in accordance with law.

(2) No law shall provide for the compulsory acquisition or use of property without adequate compensation.

E [30] In my judgment, administrative short comings amounting to negligence and breach of duty cannot justify the plaintiff being dispossessed of its interest in the said land and the fact that it has happened is a violation of the plaintiff's constitutional right under art. 13 of the Federal Constitution.

F [31] Perhaps in the current climate of the administration of the country and the transformation policy and reforms being carried out by the government, I would be prepared to say that the 1st defendant owed a duty of care to ensure that by its own mistakes and negligence, the rights of the plaintiff enshrined in art. 13 of the Federal Constitution are not rendered nugatory. This court G cannot sit back and allow the plaintiff to be deprived of its land. If not checked a landowner who takes comfort in the document of title he holds, could have his rights be taken away from him "nilly willy".

H **[23]** In the case of the impugned power of attorney, the discrepancies as to the description of parties and the address of the plaintiff being at KLCC should have at least caused the first and sixth defendants to investigate further rather to take the impugned PA at face value. Looking at s. 157(a) of the National I Land Code, that obligation is enshrined in the Code. So for those reasons the conduct of first and sixth defendants has been wanting.

[24] I now turn to the counterclaim against the first and the sixth defendant by second, third and fourth defendants. It is contended that the first and sixth defendants have been negligent in allowing the wrong IC number to be inserted in the issue document of title. Further, to allow a third party to collect the new title (IDK) without complying strictly with the 14th Schedule of the National Land Code, which is the alleged fraud in this case.

[25] I had pointed out to counsel for the third, fourth and fifth defendants that whilst the Rules of Court 2012 allows for a counter claim against the plaintiff, the third, fourth and fifth defendants could not just file a counter claim against the first and sixth defendants and what the third, fourth and fifth defendants should have done in this case was to have cited ie, first and sixth defendants as additional defendants together with the plaintiff in their counterclaim before a counterclaim is properly before the court (see O. 15 r. 3 of Rules of Court 2012). See also Supreme Court Practice 1982 (i) p. 198. Further, the pleadings had not been amended to reflect the counter claim against the first and sixth defendants and nor had the provisions of O. 15 r. 3(2) been complied with.

[26] I therefore rule there was no proper and valid counter claim pleaded against the first and sixth defendant to answer, So I dismissed the third, fourth and fifth defendants' counter claim against the first and sixth defendants and the counter claim against the plaintiff was also dismissed. The counter claim against the first and sixth defendants is incompetent and was accordingly dismissed.